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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,737	05/19/2004	Reimund Becht	P-US-PR 1099	8574
7590 Michael P. Leary Black & Decker Corporation Mail Stop TW199 701 E. Joppa Rd. Towson, MD 21286			EXAMINER TRUONG, THANH K	
			ART UNIT 3721	PAPER NUMBER
			MAIL DATE 09/26/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/849,737

Applicant(s)

BECHT ET AL.

Examiner

Thanh K. Truong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-38 is/are pending in the application.
- 4a) Of the above claim(s) 22-28,32 and 36-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-21,29-31 and 33-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 15-21,29-31 and 33-38 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is in response to applicant's amendment received on July 18, 2007.
2. Applicant's cancellation of claims 1-14 is acknowledged.
3. Claims 22-28 and 32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 14, 2006.

### ***Election/Restrictions***

4. Newly submitted claims 36-38 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claim 36 (independent claim), as recited, is distinct from the independent claims 15 and 29, as recited, in that claim 36 requires that "a second connection member having a second longitudinal axis substantially perpendicular to the first longitudinal axis and mounted to the tool housing via a second vibration damping element, and the second connecting member has a first end connected to the grip handle and second end connected to the first connecting member" (emphasis added), and claim 36 does not require a second handle.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 36-38 are withdrawn from consideration

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as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 15-21, 29-31, and 33-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recited "a first handle and a second handle", however, following this recitation, there is no structure limitation provided to define the structure relationship between the second handle and the rest of the power tool. It is unclear what is the structure limitation of the second handle in relation to the first handle, or to the rest of the members of the power tool. One can construe that the second handle in claim 1 as recited, can be an integral part of the first handle (the first and second handle are joined together into one member), or the second handle can be located anywhere away from the power tool itself; from a few feet away next to the power tool to anywhere in the universe. Therefore, "a second handle" has rendered claim 1 vague and indefinite.

Similarly, claim 29 is vague and indefinite.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 15-21, 29-31, and 33-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Sherwood, Jr. et al. (3,637,029).

Sherwood discloses an apparatus comprising:

a first handle (16) and a second handle (17) (it is construed that the first handle includes: members 16, 16a-16c, 15e, 15h, 15i, 36 and 36a);

a first handle connecting member (35) having a first axis;

a second handle connecting member (32) having a second axis, the second axis non-parallel to the first axis (it is construed that the housing includes: the portion that houses and supports the power tool engine, members 30, 30c, 33, 33a, 33b);

a first vibration damping element (24) rigidly mounted to the power tool housing between the first handle connecting member and the power tool housing; and

a second vibration damping element (23) rigidly mounted to the power tool housing between the second handle connecting member and the power tool housing;  
and

wherein the first handle is connected to the power tool housing via the first handle connecting member (35) and the second handle connecting member (32).

Sherwood further discloses:

wherein the first vibration damping element and the second vibration damping element are made of an elastomeric material (column 3, lines 5-13);

wherein the first (and second) vibration damping element is a first (and second) annular member defining a first (and second) aperture having a first (and second) aperture axis (figure 2);

wherein the first (and second) handle connecting member (28) extends coaxially through the aperture of the first (and second) vibration damping element (figure 2);

wherein the first aperture axis and the second aperture axis are non-parallel;

wherein the elastomeric element is substantially cylindrical and defines an annulus having an annulus axis substantially coaxial with one of the first axis of compression and the second axis of compression (figure 2); and

an intermediate portion located between the first vibration damping element and the second vibration damping element (figure 2).

9. Examiner's note: In light of the amendment filed July 18, 2007, the rejection of claims 29-31 and 33-35 has been revised, and the reference of Minamidate has been reinterpreted. For example, the tool housing is construed as any cover members that house and support any part members (portions) of the tool, and thus the tool housing includes: cover member (51) that houses and supports the members (49, 52 and 53) – see figure 13.

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10. Claims 15-21, 29-31, and 33-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Minamidate (EP 0 156 387).

Minamidate discloses an apparatus (Figure 13) comprising:

a first vibration damping element (50) rigidly mounted to the tool housing (51) and having a first axis of compression (the axis along the member portion (49));

a second vibration damping element (45) rigidly mounted to the tool housing (42) having a second axis of compression nonparallel to the first axis of compression (the axis along the member portion (44));

a first handle (47 on the left side of figure 13) and a second handle (47 on the right side of figure 13) and the first handle is connected to the power tool housing via the first vibration damping element and the second vibration element; and

a first handle connecting member (49) having a first axis; a second handle connecting member (44) having a second axis, the second axis non-parallel to the first axis;

Minamidate further discloses:

wherein the first axis of compression is substantially perpendicular to the second axis of compression (Fig. 13);

wherein one of the first vibration damping element and the second vibration element includes an elastomeric element;

wherein the first (and second) vibration damping element is a first (and second) annular member defining a first (and second) aperture having a first (and second) aperture axis (figure 13);

wherein the first (and second) handle connecting member extends coaxially through the aperture of the first (and second) vibration damping element (figure 13);

wherein the first aperture axis and the second aperture axis are non-parallel;

wherein the elastomeric element is substantially cylindrical and defines an annulus having an annulus axis substantially coaxial with one of the first axis of compression and the second axis of compression;

an intermediate portion (48, 53) located between the first vibration damping element and the second vibration damping element (member 48, 53 located in the middle between the two vibration damping elements); and

wherein the handle is connected to the intermediate portion (48) via the first vibration damping element (50), and the intermediate portion (48) is connected to the power tool housing via the second vibration damping element (45).

### ***Response to Arguments***

11. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

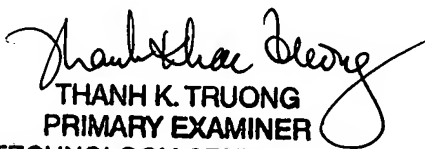
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K. Truong whose telephone number is 571-272-4472. The examiner can normally be reached on Mon-Thru 8:00AM - 6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

tk  
September 19, 2007.

  
THANH K. TRUONG  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3700